

AMENDED IN ASSEMBLY JULY 1, 2009

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE MAY 18, 2009

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 21, 2009

AMENDED IN SENATE APRIL 13, 2009

## SENATE BILL

**No. 602**

**Introduced by Senator Padilla**

**(Coauthors: Senators Alquist, DeSaulnier, Leno, Oropenza, and  
Romero)**

February 27, 2009

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~~An act to amend Section 22974.8 of the Business and Professions Code, relating to retail tobacco sales. An act to amend Sections 113947.2 and 113947.3 of, and to add Sections 113790 and 113948 to, the Health and Safety Code, relating to food safety.~~

### LEGISLATIVE COUNSEL'S DIGEST

SB 602, as amended, Padilla. ~~Retail tobacco sales: violations. Food safety.~~

*The California Retail Food provides for the regulation of health and sanitation standards for retail food facilities by the State Department of Public Health. Under existing law, a violation of these provisions is a misdemeanor. Local health agencies are primarily responsible for enforcing this law.*

*This law generally requires food facilities, except temporary food facilities, to have an owner or employee who has successfully passed*

*an approved and accredited food safety certification examination from an accredited food protection manager certification organization, except as specified.*

*This bill would require at least one of the accredited food safety certification examinations to be offered online.*

*This bill would also require, commencing January 1, 2011, a food handler, as defined, to obtain a food handler card within 30 days of his or her date of hire, and to maintain a valid food handler card for the duration of his or her employment as a food handler.*

*By creating a new crime and expanding the duties of local enforcement officials, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

~~Existing law, the Stop Tobacco Access to Kids Enforcement Act or STAKE Act, establishes various requirements for retailers relating to tobacco sales to minors. Existing law also makes it a misdemeanor for a retailer to knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sell, give, or in any way furnish a minor with tobacco products or paraphernalia. Under existing law, violation of the STAKE Act or the misdemeanor provision result in State Board of Equalization action, on a set schedule, relating to the licensure of the retailer when the youth purchase survey finds that 13% or more of youth are able to purchase cigarettes, and makes the board's authority inoperative when a youth purchase survey shows less than 13% of youth were able to purchase cigarettes.~~

~~This bill would allow the board to take action relating to the licensure of retailers who have violated the STAKE Act and misdemeanor provisions at any time, would require the enforcing agency to notify the board of a conviction of a violation in a timely manner, and would require the board to take appropriate action upon that notification. This bill would delete the provision conditioning the board's authority to take action against retailers on the results of a youth purchase survey.~~

~~This bill would also modify the schedule of actions taken by the board for violations.~~

~~This bill would require the Department of Alcoholic Beverage Control and the State Department of Public Health to provide specified information to the board upon request.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 113790 is added to the Health and Safety

2     Code, to read:

3     113790. “Food handler” means an individual who is involved  
4     in the preparation, storage, or service of food in a food facility,  
5     other than an individual holding a valid food safety certificate  
6     issued pursuant to Section 113947.3 or an individual involved in  
7     the preparation, storage, or service of food in a temporary food  
8     facility.

9     SEC. 2. Section 113947.2 of the Health and Safety Code is  
10    amended to read:

11    113947.2. The food safety certification examination for  
12    purposes of Section 113947.1 shall include, but need not be limited  
13    to, all of the following elements of knowledge:

14    (a) Foodborne illness, including terms associated with foodborne  
15    illness, micro-organisms, hepatitis A, and toxins that can  
16    contaminate food and the illness that can be associated with  
17    contamination, definition and recognition of potentially hazardous  
18    foods, chemical, biological, and physical contamination of food,  
19    and the illnesses that can be associated with food contamination,  
20    and major contributing factors for foodborne illness.

21    (b) The relationship between time and temperature with respect  
22    to foodborne illness, including the relationship between time and  
23    temperature and micro-organisms during the various food handling,  
24    preparation, and serving states, and the type, calibration, and use  
25    of thermometers in monitoring food temperatures.

26    (c) The relationship between personal hygiene and food safety,  
27    including the association of hand contact, personal habits and  
28    behaviors, and food employee health to foodborne illness, and the  
29    recognition of how policies, procedures, and management  
30    contribute to improved food safety practices.

(d) Methods of preventing food contamination in all stages of food handling, including terms associated with contamination and potential hazards prior to, during, and after delivery.

(e) Procedures for cleaning and sanitizing equipment and utensils.

(f) Problems and potential solutions associated with facility and equipment design, layout, and construction.

(g) Problems and potential solutions associated with temperature control, preventing cross-contamination, housekeeping, and maintenance.

*SEC. 3. Section 113947.3 of the Health and Safety Code is amended to read:*

113947.3. (a) Food safety certification *required pursuant to Section 113947.1* shall be achieved by successfully passing an examination from an accredited food protection manager certification organization. The certification organization ~~must~~ *shall* be accredited by the American National Standards Institute as meeting the requirements of the Conference for Food Protection's "Standards for Accreditation of Food Protection Manager Certification Programs." Those food employees who successfully pass an approved certification examination shall be issued a certificate by the certifying organization. The issuance date for each original certificate issued pursuant to this section shall be the date when the individual successfully completes the examination. Certificates shall be valid for five years from the date of original issuance. Any replacement or duplicate certificate shall have as its expiration date the same expiration date that was on the original certificate.

(b) (1) ~~Within 12 months after the effective date of this part, By July 20, 2008,~~ the department, in consultation with the California Conference of Directors of Environmental Health, representatives of the retail food industry, and other interested parties, shall develop and implement a program for the purposes of demonstrating adequate knowledge for operators of temporary food facilities.

(2) At least one of the accredited food safety certification examinations shall cost no more than sixty dollars (\$60), including the certificate. However, the department may adjust the cost of food safety certification examinations to reflect actual expenses incurred in producing and administering the food safety

1 certification examinations required under this section. If a food  
2 safety certification examination is not available at the price  
3 established by the department, the certification and recertification  
4 requirements relative to food safety certification examinations  
5 imposed by this section shall not apply.

6 *(3) At least one of the accredited food safety certification*  
7 *examinations shall be offered online.*

8 *SEC. 4. Section 113948 is added to the Health and Safety Code,*  
9 *to read:*

10 *113948. (a) (1) Commencing January 1, 2011, and subject*  
11 *to the exceptions described in subdivision (d), a food handler shall*  
12 *obtain a food handler card from an food protection manager*  
13 *certification organization described in Section 113947.3 within*  
14 *30 days after the date of hire, and maintain a valid food handler*  
15 *card for the duration of his or her employment as a food handler.*

16 *(2) Food handler cards shall be valid for three years from the*  
17 *date of issuance, regardless of whether the food handler changes*  
18 *employers during that period.*

19 *(3) A food handler card shall be recognized throughout the*  
20 *state, including for purposes of a food handler program described*  
21 *in subdivision (e).*

22 *(b) A food handler card shall be issued only upon successful*  
23 *completion of an approved food handler training course and*  
24 *assessment that meets at least all of the following requirements:*

25 *(1) The course provides basic, introductory instruction on the*  
26 *elements of knowledge described in subdivisions (a) to (g),*  
27 *inclusive, of Section 113947.2.*

28 *(2) The course and assessment is designed to be completed*  
29 *within approximately two and one-half hours.*

30 *(3) The assessment consists of at least 40 questions regarding*  
31 *the required subject matter.*

32 *(4) A minimum score of 70 percent on the assessment is required*  
33 *to successfully complete the assessment.*

34 *(c) The food handler training course and assessment may be*  
35 *offered through a trainer-led class and assessment a process where*  
36 *the individual trains, and takes an assessment, without the presence*  
37 *or intervention of a trainer or instructor, and includes, but is not*  
38 *limited to, training and assessment through the use of a computer*  
39 *program or the Internet.*

(d) This section shall not apply to a food handler who is employed by any of the following:

(1) Certified farmer's markets.

(2) Commissaries.

(3) Grocery stores, except for separately owned food facilities to which this section otherwise applies that are located in the grocery store. For purposes of this paragraph, "grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry. "Grocery store" includes convenience stores.

(4) Licensed health care facilities.

(5) Mobile support units.

(6) Public and private school cafeterias.

(7) Restricted food service facilities.

(8) Retail stores in which a majority of sales are from a pharmacy, as defined in Section 4037 of the Business and Professions Code.

(e) The requirements of this section shall not apply to food handlers who possess a valid food handler card or certification issued pursuant to a food handler program that took effect prior to January 1, 1998, but only in the form in which the program existed prior to January 1, 1998.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Section 22974.8 of the Business and Professions Code is amended to read:~~

~~22974.8. (a) (1) The board shall take action against a retailer, convicted of a violation of either the STAKE Act (Division 8.5~~

1 ~~(commencing with Section 22950) or Section 308 of the Penal~~  
2 ~~Code, according to the schedule set forth in subdivision (b):~~

3 ~~(2) Convictions of violations by a retailer at one retail location~~  
4 ~~may not be accumulated against other locations of that same~~  
5 ~~retailer.~~

6 ~~(3) Convictions of violations accumulated against a prior retail~~  
7 ~~owner at a licensed location may not be accumulated against a~~  
8 ~~new retail owner at the same retail location.~~

9 ~~(4) Prior to suspending or revoking a retailer's license to sell~~  
10 ~~cigarette and tobacco products, the board shall notify the retailer.~~  
11 ~~The notice shall include instructions for appealing the license~~  
12 ~~suspension or revocation.~~

13 ~~(b) (1) Upon the first conviction of a violation of either the~~  
14 ~~STAKE Act (Division 8.5 (commencing with Section 22950) or~~  
15 ~~Section 308 of the Penal Code, the retailer shall receive a warning~~  
16 ~~letter from the board that delineates the circumstances under which~~  
17 ~~a retailer's license may be suspended or revoked and the amount~~  
18 ~~of time the license may be suspended or revoked. The retailer and~~  
19 ~~its employees shall receive training on tobacco control laws from~~  
20 ~~the State Department of Public Health upon a first conviction. The~~  
21 ~~retailer shall also be assessed a penalty of seven hundred and fifty~~  
22 ~~dollars (\$750).~~

23 ~~(2) Upon the second conviction of a violation of either the~~  
24 ~~STAKE Act (Division 8.5 (commencing with Section 22950)) or~~  
25 ~~Section 308 of the Penal Code, the retailer shall be subject to a~~  
26 ~~fine of one thousand five hundred dollars (\$1,500). The board shall~~  
27 ~~suspend the retailer's license to sell cigarette and tobacco products~~  
28 ~~for 25 days.~~

29 ~~(3) Upon the third conviction of a violation of either the STAKE~~  
30 ~~Act (Division 8.5 (commencing with Section 22950)) or Section~~  
31 ~~308 of the Penal Code, the board shall revoke the retailer's license~~  
32 ~~to sell cigarette and tobacco products.~~

33 ~~(e) For any conviction of a violation of either the STAKE Act~~  
34 ~~(Division 8.5 (commencing with Section 22950) or Section 308~~  
35 ~~of the Penal Code, the State Department of Public Health or other~~  
36 ~~enforcing agency shall notify the board of the conviction in a timely~~  
37 ~~manner, and the board shall take appropriate action pursuant to~~  
38 ~~that notification. If a state or local law enforcement agency does~~  
39 ~~not timely notify the board, the board may take action against a~~  
40 ~~retailer for the violation. For purposes of this subdivision, "timely~~

1 manner” means when the conviction is obtained and all appeal  
2 rights are exhausted.

3 (d) (1) Notwithstanding any other provision of this division,  
4 no licensee may petition the board for an offer in compromise for  
5 a third or any subsequent violation of either the STAKE Act  
6 (Division 8.5 (commencing with Section 22950)) or Section 308  
7 of the Penal Code that occurs within 36 months of the initial  
8 violation.

9 (2) Notwithstanding any other law, the board may revoke a  
10 license for a third violation of either the STAKE Act (Division 8.5  
11 (commencing with Section 22950)) or Section 308 of the Penal  
12 Code that occurs within any 36-month period. This paragraph shall  
13 not be construed to limit the board’s authority and discretion to  
14 revoke a license prior to a third violation when the circumstances  
15 warrant that penalty.

16 (3) For purposes of this subdivision, no violation may be  
17 considered for purposes of determination of the penalty until it has  
18 become final.

19 (e) The Department of Alcoholic Beverage Control shall, upon  
20 request, provide to the board any licensure information, including,  
21 but not limited to, applications, license issuance, license transfers,  
22 license denials, or any other information necessary to administer  
23 this chapter. The State Department of Public Health shall, upon  
24 request, provide to the board any information, including, but not  
25 limited to, statewide information on the annual Youth Tobacco  
26 Purchase Survey, STAKE compliance checks, California retailers  
27 and youth tobacco control laws, or any other information necessary  
28 to administer this chapter.

29 (f) For purposes of this section, “conviction of a violation”  
30 includes a conviction under Section 308 of the Penal Code, or a  
31 final administrative adjudication imposing a civil penalty under  
32 the STAKE Act.